ATTORNEY FOR APPELLANT:

JOHN QUIRK
Public Defender
Muncie, Indiana

ATTORNEY FOR APPELLEE:

TIMOTHY R. HOLLEMS
Indiana Department of Child Services
Muncie, Indiana

IN THE
COURT OF APPEALS OF INDIANA

IN THE MATTER OF THE INVOLUNTARY TERMINATION OF THE PARENT/CHILD RELATIONSHIP OF C.M., a MINOR CHILD, and JEFFREY LAMBERSON, JR. and MERI MANOCK, HER PARENTS	)	
JEFFREY LAMBERSON, JR.,	)	
Appellant-Respondent,	)	
vs.	)	No. 18A02-0608-JV-698
INDIANA DEPARTMENT OF CHILD SERVICES,	)	
Appellee-Petitioner.	)	

APPEAL FROM THE DELAWARE CIRCUIT COURT
The Honorable Richard A. Dailey, Judge
The Honorable Joseph Speece, Master Commissioner
Cause No. 18C02-0310-JT-17

April 9, 2007

MEMORANDUM DECISION – NOT FOR PUBLICATION

CRONE, Judge

Case Summary

Jeffrey Lamberson, Jr. ("Father"), appeals the trial court's order granting the petition of the Indiana Department of Child Services (the "DCS") for the involuntary termination of his parental rights over his daughter, C.M. (date of birth: 6/19/00).[1] We affirm.

Issues

Father presents three issues, which we restate as follows:

I. Whether the DCS provided clear and convincing evidence to support the involuntary termination of his rights;

II. Whether the DCS provided appropriate services to reunite him with C.M., and

III. Whether the court erred in admitting certain exhibits and not granting Father's motion to dismiss based on collateral estoppel.

Facts and Procedural History

On May 16, 2002, the Wayne County Office of Family and Children filed a petition alleging that C.M. was a "child in need of services" ("CHINS"). Appellant's App. at 320-21. According to the petition, after having been asked to leave a shelter, Mother, C.M., and C.M.'s half-brother moved into a motel in Richmond. *Id*. at 320. A police officer, who had been called to check on the welfare of the children, found the hotel room to be below minimum standards for cleanliness and noted that there was no food in the room for the children to eat. *Id*. The children were taken into protective custody, and Mother, who had a difficult childhood and a history of mental illness, was encouraged to voluntarily commit herself to the psychiatric ward at Reid Hospital. *Id*. at 320-21.

[1] The parental rights of Meri Manock, C.M.'s mother ("Mother"), were involuntarily terminated but are not the subject of this appeal.

On June 17, 2002, Father and Mother admitted to the allegations of the CHINS petition and requested an immediate dispositional hearing. *Id*. at 322. Consequently, the court found C.M. to be a CHINS, reviewed the predispositional and parental participation reports, heard statements, ordered C.M. a ward for appropriate placement, and required Father and Mother to participate in services. *Id.* Thereafter, the case was transferred to Delaware County.

On August 4, 2003, the court entered an order suspending visitation between Father and C.M. Exh. at 63. The order set out allegations of lax supervision, physical altercations resulting in minor injuries to C.M.'s half-brother, deterioration in C.M.'s behavior following visitation with Father, and that only four of seven visitations were exercised. *Id*. at 63-66. On October 1, 2003, the DCS filed a petition for involuntary termination of parental rights. On November 17, 2003, the court held a permanency planning review hearing, which both parents attended. The following month, the court issued an order finding that (1) the parents had been offered, provided, and/or delivered appropriate unification services; (2) Mother was on a court commitment to Richmond State Hospital; (3) Father had not started counseling; (4) C.M. should continue in her current foster home placement, with adoption being a possibility if parental rights were terminated; and (5) the family "shall participate in services[.]" *Id*. at 67-70.

On August 23, 2004, the court held an evidentiary hearing. On October 7, 2004, the court issued its "Combined Findings of Fact, Conclusions of Law, and Judgment," in which it terminated Mother's parental rights but not Father's. *Id*. at 151-57. In support of its

conclusion that the DCS had failed to prove by clear and convincing evidence that Father's parental rights should be terminated, the court made the following findings:

> 34. That [Father] receives disability benefits for which he is not the payee and lives with his father in Richmond, Indiana.
> 35. That [Father's] home with his father was satisfactory for overnight visits with [C.M.] until [her] half brother was injured in the home.
> 36. That [Father] was not the custodial parent of [C.M.] responsible for providing a stable environment for [C.M.] when the Division of Family and Children Services first became involved in this matter.
> 37. That [Father] has not had the care and custody of [C.M.] except for during visitation.
> 38. That [Father] was ordered to participate in diagnostic testing at the Dunn Center in Richmond, Indiana.
> 39. That [Father] met once with Dr. Brian Zitman for diagnostic testing.
> 40. That [Father] failed to attend follow up appointments with Dr. Zitman.
> 41. That the Dunn Center attempted to contact [Father] regarding continuing the diagnostic testing.
> 42. That [Father] attended 3 of 12 parenting class[es] at the Dunn Center.
> 43. That [Father] stopped attending the parenting class when he had to spend 2 weeks in jail.
> 44. That [Father] said he would contact the Dunn Center after he served his two weeks in jail and then failed to contact the Dunn Center and resume the parenting classes.
> 45. That there is insufficient evidence to support the need for [Father] to participate in diagnostic testing and parenting classes.
> 46. That there is insufficient evidence to show that [Father] was aware of the importance of his following through with services.
> 47. That there is insufficient evidence to show that [Father] is unable or unwilling to provide [C.M.] with a safe and stable environment.

App. at 154-55. The court referred the matter "back to the underlying CHINS cause for further proceedings consistent with this order and the plans for the care and treatment of the child." *Id.* at 156.

On October 26, 2004, the court issued an "Amendment to Permanency Planning Order," which required Father to, *inter alia*, maintain a log of his efforts to comply with the court orders and his efforts to get reunited with C.M., obtain psychological testing, and

complete an intake process for counseling. Exh. at 348. In addition, he was to actively begin participation in individual counseling at the Dunn Center to address issues relative to parenting, family of origin, and for education in the areas of structure, stability, and safety for meeting C.M.'s needs. *Id*. Further, he was ordered to continue the counseling until the Dunn Center or the court indicated otherwise, to meet at least once every two weeks with the case manager, to leave messages on answering machines, and to seek court approval before signing any guardianship or termination papers regarding C.M. *Id*. at 349-50.

On November 30, 2004, the court held a "30 Day Review hearing." *Id*. at 352. In a January 10, 2005 order regarding that hearing, the court found that appropriate services had been provided, that Father had "missed three out of four scheduled appointments at the Dunn Center," and that Father blamed his incarceration and transportation issues for his failure to attend. *Id*. at 353. Accordingly, the court continued C.M.'s placement in foster care and ordered Father to "submit to a psychological evaluation conducted by Dr. Paul Spengler," to sign consents, and to follow all recommendations from the psychological evaluation. *Id.* at 354.

On January 31, 2005, the court held a "60 Day Review hearing." *Id*. at 357. In the March 28, 2005 order that resulted, the court found, *inter alia*, that Father had "missed three out of seven scheduled appointments at the Dunn Center," that he cited "oversleeping" as the reason for missing one of the appointments, and that he had submitted to a psychological evaluation by Dr. Spengler. *Id*. at 358. The court continued C.M.'s placement, ordered Father to attend ten individual counseling sessions at the Dunn Center, and required him to submit to another psychological evaluation by Dr. Spengler. *Id*. at 359.

On June 9, 2005, the DCS filed a second petition to involuntarily terminate Father's parental rights over C.M. *Id*. at 364. On October 3, 2005, the court held a permanency planning review hearing. *Id*. at 367. In its January 24, 2006 order regarding permanency planning, the court continued C.M.'s foster placement and made the following findings: Father had not attended any parenting groups since March 16, 2005; Father did not have good attendance prior to March 16, 2005; Father had failed to meet or contact the case manager regarding his activities pertaining to C.M.; and it was unknown whether Father has maintained a log as ordered. *Id*. at 368-70. In that same order, the court noted that terminating Father's parental rights was an objective of the permanency plan. *Id*. at 370.

On April 18, 2006, the court heard evidence concerning the termination petition filed against Father. Tr. at 274-413. In its August 9, 2006 order terminating Father's parental rights, the court stated it "now finds as follows":

> 2. That [C.M.] has been removed from the care of the parents and has been under the supervision of a county office of family and children for at least fifteen (15) months of the most recent twenty-two (22) months.
> 3. That Dr. Paul Spengler testified that [he] conducted a psychological evaluation of [Father] on December 21, 2004 and January 11, 2005 . . . .
> 4. That Dr. Spengler testified that [Father] gave vague responses regarding [C.M.'s] background, and that he could not provide specific, fact-based answers concerning the child.
> 5. That Dr. Spengler testified that [Father's] test results from the MMPI-2 reveal that upon the first administration, he was extremely defensive and presented himself in an unrealistically virtuous manner, suggesting that [Father] is a psychologically unsophisticated person who was highly resistant to testing for this test.
> 6. That Dr. Spengler testified that [Father] took a second MMPI-2 whereby unlike the first test, the second administration produced an inconsistent set [of] responses, leading Dr. Spengler to conclude that he refused to cooperate with the psychological evaluation.
> 7. That Dr. Spengler testified that [Father's] MCMI-III test results indicate that he presents himself in an unrealistically favorable light, is highly

defensive, is likely to exhibit narcissistic traits, and responds similarly to individuals who have an inflated sense of their own self-importance.

8. That Dr. Spengler testified that the completed Parenting Stress Index (PSI) of [Father] revealed that he felt exceptionally overwhelmed by the idea of being a parent, has poor attachment, [C.M.] is not the child he wanted, has strong feelings that fulfilling the role of parent will lead to unwanted restrictions, and is at high risk for significant parenting problems. The results of the PSI and the high elevation on virtually all of the measurable scales indicate to Dr. Spengler that [Father] is not interested in being a parent to [C.M.] and is averse to fulfilling the role of parent.

9. That Dr. Spengler concluded that the impairment of the parent-child bond is so significant and the stress level so high that it is a clear sign that [Father] does not wish to fulfill the role of parent to [C.M.] and that he is at high risk for significant parenting problems if forced to fulfill that role.

10. That Margaret Richardson, Therapist for [C.M.], testified that [C.M.] suffers from issues concerning abandonment, low self-esteem, and anxiety due to the lack of permanency and stability in the child's life.

11. That Margaret Richardson testified that [C.M.] exhibits no bond with [Father], has never lived with [Father], does not know [Father's] name, and never mentions [Father].

12. That Margaret Richardson testified that [C.M.] has a strong bond with her brother and that this relationship is important to [C.M.].

13. That Margaret Richardson testified that permanency is a critical need for [C.M.] and that she believes that it is in the best interest of [C.M.] to remain attached with her brother.

14. That Amanda Mullins, Dunn Center therapist assigned [to Father] testified that he was to participate and complete individual therapy, parenting classes, group therapy, family therapy, and participate in a psychiatric evaluation.

15. That Amanda Mullins testified that [Father] demonstrated very little progress in addressing his issues, had very little motivation as demonstrated by his poor attendance in services, and lacked appropriate insight and judgment.

16. That Amanda Mullins testified that because of the lack of progress and attendance, that [Father's] file was closed out, that he was instructed in a letter to contact the Dunn Center to restart services, and that [Father] has never contacted the Dunn Center to reinstate services.

17. That the foster parent of [C.M.] testified that [C.M.] never refers to [Father] as dad.

18. That [the foster parent of C.M.] testified that there is a strong bond between [C.M.] and the half-brother also in [the same foster care home].

19. That [the foster parent of C.M.] testified that [Father] never inquired as to the well-being of [C.M.] and never displayed any interest in [C.M.].

20. That [DCS case manager] testified that [Father] missed many court-ordered counseling sessions and was dismissed from services because of his lack of attendance.
21. That [the DCS case manager] testified that [Father] was on probation from a theft conviction, violated the rules of probation, pled guilty to an attempted burglary charge, and has been sentenced to serve four (4) years on the attempted burglary charge, plus two-hundred fifty (250) additional days for violating the terms of his probation. [Father] remains incarcerated.
22. That The Court Appointed Special Advocate, Joe Griffith, testified that he reviewed all of the material, he was uncertain as to what was in the best interest of [C.M.] given that he did not directly speak with [C.M.]
23. That based on the foregoing, there is a reasonable probability that the conditions that resulted in [C.M.'s] removal will not be remedied.
24. That based on the foregoing, there is a reasonable probability that the continuation of the parent/child relationship herein poses a threat to the well being of the child.
25. Termination of the parent/child relationship is in the best interest of the child.
26. The Indiana DCS has a satisfactory plan for the care and treatment of [C.M.], which includes adoptive placement.
27. The Indiana DCS has proven their petition herein by clear and convincing evidence.

App. at 247-51.[2] Further details will be supplied as necessary.

[2] We feel compelled to acknowledge the recent case, *Parks v. Delaware County Dep't of Child Servs.*, 18A02-0607-JV-597 (Ind. Ct. App. March 21, 2007), in which a panel of this court stated: "Although not raised by the parties, we find it necessary to review and comment on the propriety of the trial court's findings." The *Parks* panel discouraged the "wholesale adoption" of one party's proposed findings, faulted the "findings" in that case because many stated a certain witness "testified that . . .," and ultimately remanded the case for "proper findings of fact and conclusions of law." The *Parks* court cited, *inter alia*, *Perez v. U.S. Steel Corp.*, 426 N.E.2d 29, 33 (Ind. 1981), *In re Adoption of T.J.F.*, 798 N.E.2d 867, 874 (Ind. Ct. App. 2003), and *Moore v. Ind. Family & Social Servs. Admin.*, 682 N.E.2d 545, 547 (Ind. Ct. App. 1997). We agree that the wholesale adoption of a party's proposed findings, while at times appropriate, should be done with great care. We also do not encourage findings that a certain witness "testified that . . . ." However, for a variety of reasons, we are not inclined to remand here. First, Father did not raise these issues, and we are reluctant to do so sua sponte. Second, a trial court is not statutorily required to enter findings when involuntarily terminating a parent-child relationship. *See* Ind. Code § 31-35-2-8. Third, we are persuaded by the reasoning in *Weiss v. Harper*, 803 N.E.2d 201, 206 n.8 (Ind. Ct. App. 2003) that *Perez*'s specificity requirement "appears applicable only to administrative fact-finding[;]" *see also Stiller v. La Porte Hosp., Inc.*, 570 N.E.2d 99, 106 (Ind. Ct. App. 1991) (noting, "the *Perez* court clarified the substantive purposes of the fact-finding requirement in the context of the Worker's Compensation Act, IC 22-3-4-7"). Fourth, unlike in *Perez*, which had but one "summarily-stated evaluation of the evidence" and one restatement thereof that provided no guidance as to what evidence, if any, supported the conclusion, the present order is comprised of numerous, detailed findings that make it abundantly clear that there was evidentiary support for the

Discussion and Decision

I. Clear and Convincing Evidence to Support Termination

Father challenges the sufficiency of the State's evidence to support the requirements for termination. Pursuant to Indiana Code Section 31-35-2-4(b)(2), a petition to terminate the parent-child relationship must allege in relevant part that:

> (A) one (1) of the following exists:
>
> (i) the child has been removed from the parent for at least six (6) months under a dispositional decree;
>
> (ii) a court has entered a finding under IC 31-34-21-5.6 that reasonable efforts for family preservation or reunification are not required, including a description of the court's finding, the date of the finding, and the manner in which the finding was made; *or*
>
> (iii) after July 1, 1999, the child has been removed from the parent and has been under the supervision of a county office of family and children for at least fifteen (15) months of the most recent twenty-two (22) months;
>
> (B) there is a reasonable probability that:
>
> (i) the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied; *or*
>
> (ii) the continuation of the parent-child relationship poses a threat to the well-being of the child;
>
> (C) termination is in the best interests of the child; and
>
> (D) there is a satisfactory plan for the care and treatment of the child.

(Emphases added). If the court finds that the allegations in a petition are true, the court shall terminate the parent-child relationship. Ind. Code § 31-35-2-8. "A finding in a proceeding to terminate parental rights must be based upon clear and convincing evidence." Ind. Code § 31-37-14-2.

Our standard of review is well settled:

---

conclusions. Fifth, even if we were to remand due to the troublesome "testified that" language, we can easily envision how the trial court "may be tempted upon remand to simply reword" the findings. *See Moore*, 682 N.E.2d at 547. Thereafter, we would likely be presented with the same issues in a subsequent appeal.

> When reviewing a termination of parental rights, we will not reweigh the evidence or judge the credibility of the witnesses. We will consider only the evidence and reasonable inferences that are most favorable to the judgment. Here, the trial court made findings in granting the termination of [Father's] parental rights. Where the trial court has entered findings of fact, we first determine whether the evidence supports the findings. Then, we determine whether the findings support the judgment. The trial court's findings and judgment will be set aside only if they are clearly erroneous. A finding is clearly erroneous when there are no facts or inferences drawn therefrom which support it. A judgment is clearly erroneous only if the findings of fact do not support the trial court's conclusions thereon, or the conclusions thereon do not support the judgment.

In re Termination of Parent-Child Relationship of D.D., 804 N.E.2d 258, 265 (Ind. Ct. App. 2004) (citations omitted), *trans. denied*. Moreover,

> [t]he traditional right of parents to establish a home and raise their children is protected by the Fourteenth Amendment of the United States Constitution. However, these parental interests are not absolute and must be subordinated to the child's interests in determining the proper disposition of a petition to terminate parental rights. Parental rights may be terminated when the parents are unable or unwilling to meet their parental responsibilities. The purpose of terminating parental rights is not to punish parents but to protect children.

Id. at 264-65 (citations and quotation marks omitted).

Contending that C.M. was "removed" from Mother rather than from him, Father disputes the six-month removal requirement of Indiana Code Section 31-35-2-4(b)(2)(A)(i). However, Indiana Code Section 31-35-2-4(b)(2)(A) is written in the disjunctive, and the court specifically relied upon a different subsection. The court found that C.M. "has been removed from the care of the parents and has been under the supervision of a county office of family and children for at least fifteen (15) months of the most recent twenty-two (22) months." *See* App. at 247 (finding 2); Ind. Code § 31-35-2-4(b)(2)(A)(iii). The evidence

---

Considering judicial economy and recognizing the heavy caseloads carried by trial courts, we "deem it

reveals that C.M. has been under the supervision of a county office of family and children since May 2002 – well beyond the fifteen-month minimum. Moreover, while it is true that C.M. was not removed from Father per se, the DCS clearly *retained* custody of C.M. for more than fifteen months.[3] *See, e.g.*, *In re A.A.C.*, 682 N.E.2d 542, 544 (Ind. Ct. App. 1997) ("It is true that A.A.C. was never in M.D.'s custody so technically he was never removed. Instead, the proper inquiry is first what conditions led to the DPW's *retention* of custody of A.A.C. once it was determined that M.D. was the father[.]") (emphasis added); *see also In re A.I.*, 825 N.E.2d 798, 806 (Ind. Ct. App. 2005) ("[I]t is not just the basis for the initial removal of the child that may be considered for purposes of determining whether a parent's rights should be terminated, but also those bases resulting in the continued placement outside of the home."), *trans. denied.*

Father next asserts that the DCS failed to prove by clear and convincing evidence that the dirty living conditions and lack of food in Mother's hotel room had not been remedied or why C.M. was placed in foster care rather than with Father. Again, the proper inquiry in a case like this is whether there is a reasonable probability that the conditions that resulted in C.M.'s continued placement outside the home will not be remedied. *See* Ind. Code § 31-35-2-4(b)(2)(B)(i). In making this determination, a trial court must judge a parent's fitness to care for his child at the time of the termination hearing, taking into account evidence of changed conditions. *See D.D.*, 804 N.E.2d at 266. "[T]he trial court must also evaluate the

---

appropriate to address the merits of" Father's appeal. *See id*.

[3] This is true even if the calculation begins anew after the denial of the first termination petition.

parent's habitual patterns of conduct to determine the probability of future neglect or deprivation of the child." *Id.* (citation and quotation marks omitted).

Having pled guilty to class C felony attempted burglary in July 2005, received a four-year sentence to be served at the Department of Correction consecutive to a 250-day sentence from a separate case, and violated probation, Father was unable to care for C.M. at the time of the termination hearing. The court was also presented with numerous witnesses who unanimously agreed that time and again Father failed to complete – or in some instances even begin – various reunification services provided to him. His attendance and his progress have been so minimal that he has been dismissed from several programs. Testimony revealed that Father does not wish to parent C.M., that he has never inquired as to her well-being, that he never displayed any interest in her, and that he has a high risk for significant parenting problems.

Recognizing our deferential standard of review, we conclude that the aforementioned evidence and the other unchallenged findings support the finding that there is a reasonable probability that the conditions that resulted in C.M.'s removal/continued placement outside the care and custody of Father will not be remedied. *See* App. at 250 (finding 23); *see Wagner v. Grant County Dep't of Pub. Welfare*, 653 N.E.2d 531, 533 (Ind. Ct. App. 1995) (concluding that evidence supported finding that parent had a pattern of criminal activity that rendered him incapable of caring for child and that there was a reasonable probability that the condition would not be remedied); *see also Matter of K.H.*, 688 N.E.2d 1303, 1305 (Ind. Ct. App. 1997) ("although employed, [defendant] lacked sufficient concern for his daughter's well-being to support her or maintain contact with her. [Defendant's] lack of concern has

persisted while in prison, as he has made no effort to contact his daughter or seek information about her welfare" thus supporting conclusion that conditions would not be remedied in future). To conclude otherwise would be to reweigh the evidence and exhibits and/or judge the credibility of the witnesses. We are not permitted to do so.[4]

Father also includes a brief argument challenging the best interests and satisfactory plan elements. *See* Ind. Code §§ 31-35-2-4(b)(2)(C), (D); *see also* App. at 251 (findings 25, 26). The court heard evidence that C.M. suffers from issues concerning abandonment, low self-esteem, and anxiety due to the lack of permanency and stability in her life. Evidence was introduced that C.M.'s strong bond with her brother is important to her. In contrast, the court learned that C.M. exhibits no bond with Father, has never lived with him, does not know his name, and never mentions him. C.M. has not visited with Father since 2003, when her brother received injuries while the children were in Father's care. In addition, C.M.'s therapist testified that permanency is a critical need for C.M. and that it is in the best interest of C.M. to remain attached to her brother. The DCS proposed adoption as its plan for C.M. if parental rights were terminated. Considering all of the above as well as the extraordinary amount of time that Father has had to change his ways, we will not second-guess either the court's best interest finding or its finding that adoption is a satisfactory plan. *See Matter of C.M.*, 675 N.E.2d 1134, 1139 (Ind. Ct. App. 1997) ("The trial court need not wait until the

[4] Although Father challenges finding 24 ("there is a reasonable probability that the continuation of the parent/child relationship poses a threat to the well being of the child," App. at 251), we need not address this issue. Indiana Code Section 31-35-2-4(b)(2)(B) "is written in the disjunctive[.]" *In re C.C.*, 788 N.E.2d 847, 854 (Ind. Ct. App. 2003), *trans. denied*. Thus, the court was required to find *either* that the conditions that resulted in C.M.'s removal or the reasons for placement outside the home will not be remedied *or* that the continuation of the parent-child relationship poses a threat to her well-being. It need not have found both.

child is irreversibly harmed such that the child's physical, mental and social development is permanently impaired before terminating the parent-child relationship.").

II. Appropriate Reunification Services Provided

Citing Indiana Code Section 31-34-9-7, Father faults the lower court for failing to award him or his father custody of C.M. "or even consider the placement with the paternal grandfather." Appellant's Br. at 19. Indiana Code Section 31-34-9-7 is a CHINS provision, and Father does not explain why he is raising a CHINS placement question after his parental rights have been terminated. *See Hite v. Vanderburgh County Office of Family & Children*, 845 N.E.2d 175, 182 (Ind. Ct. App. 2006) ("although termination proceedings and CHINS proceedings have an interlocking statutory scheme because involuntary termination proceedings are governed by the CHINS statutory procedures, CHINS proceedings are separate and distinct from involuntary termination proceedings because a CHINS cause of action does not necessarily lead to an involuntary termination cause of action."). Father also offers no explanation as to how C.M. could have been placed with him when he was incarcerated and/or not complying with services offered to him during the almost five years that his daughter has been in foster care.

To the extent that any argument could be made regarding custody or placement with the paternal grandfather, such an argument is not Father's to make. *See In re Custody of G.J.*, 796 N.E.2d 756 (Ind. Ct. App. 2004), *trans. denied*; *see also Adoption of J.B.S.*, 843 N.E.2d 975 (Ind. Ct. App. 2006). Incidentally, the fact that Father was permitted visitation with C.M. while living at paternal grandfather's house cuts against the assertion that they were never considered. What Father omits is that during one of these visitations, prior to

Father's incarceration, C.M.'s brother was injured, and consequently visitation was terminated.

Father also asserts, "no hearings were held or orders created from the date of the first termination to the filing date of the second. . . . No services were ordered or effort made to reunite [C.M.] with [Father]." Appellant's Br. at 19-20. The termination chronological case summary does not list the review hearings that were indeed held or the orders that were actually issued between the October 7, 2004 denial of the first petition to terminate Father's paternal rights and the June 9, 2005 filing of the second petition to terminate Father's paternal rights. *See* Facts and Procedural History Section, *supra.* This confusion may be explained by the October 7, 2004 order, which specifically referred the matter "back to the underlying CHINS cause for further proceedings consistent with this order and the plans for the care and treatment of [C.M.]." App. at 156. That said, we are baffled that Father could argue that no services were offered after the denial of the first termination petition, given the pages and pages of testimony and exhibits to the contrary that were presented at the April 18, 2006 hearing. Father did not object to this evidence regarding services offered but not started and/or completed by him. Father's second issue presents no reversible error.

III. Admission of CHINS Exhibits, Denial of Motion to Dismiss, Collateral Estoppel

Father argues that the second petition for termination dealt with the same issue that was already fully and fairly litigated in the first termination proceeding and also utilized the same materials in support thereof. Therefore, he contends, collateral estoppel should have barred the subsequent action. "Collateral estoppel operates to bar relitigation of the same issue where that issue was necessarily adjudicated in a former suit and the same issue is

presented in the subsequent lawsuit." *Adams v. Marion County Office of Family & Children*, 659 N.E.2d 202, 205 (Ind. Ct. App. 1995); *see also C.M.*, 675 N.E.2d at 1137.

We do not dispute that the court admitted evidence regarding the first termination proceeding at the April 18, 2006 hearing. Indeed, the court confirmed that the denial of the first termination petition was not a dismissal of the underlying CHINS case; rather, the CHINS case was "ongoing" and the evidence would "continue to be available[.]" App. at 293. This was consistent with the order arising from the first termination hearing, which referred the matter "back to the underlying CHINS cause for further proceedings[.]" *Id*. at 156. However, that was hardly the only evidence. Again, despite the confusing chronological case summary, it is clear that subsequent hearings were held, new orders were issued, and more services were offered between the time of the first termination proceeding and the second. In essence, Father was given more time to demonstrate his interest in, and ability to parent, C.M. It is glaringly apparent from the updated evidence presented at the April 18, 2006 hearing that Father squandered his opportunity. In light of the new evidence, we conclude that the second termination proceeding was not merely a rehash of the first. Instead, it was the first opportunity to fully and fairly litigate the new petition to terminate Father's parental rights and the evidence in support thereof. Therefore, collateral estoppel does not apply, and Father's motion to dismiss was properly denied.

Affirmed.

SHARPNACK, J., concurs.

SULLIVAN, J., concurs in result.